

## Chapter 5

### Eligibility

#### 5.1 Authority: 34 CFR 361.42

#### 5.2 Policy

USOR policy is that eligibility is determined as soon as possible, at least within 60 days from the date the application is received. The only exception to this 60 day deadline is in the event of extenuating circumstances beyond the control of USOR and in cases where the client has agreed to and signed an extension for a specific period of time. Once a VR Counselor has taken possession of the necessary documentation required to make an eligibility determination it is USOR policy that that determination be made as soon as possible. USOR policy is that an eligibility determination has been officially made only when a "Certificate of Eligibility" the official title of the eligibility letter has been completed by the VR Counselor. The date that the eligibility letter was prepared is the official eligibility date and should match the date in the body of the letter. USOR policy prohibits false, fraudulent, or manipulative practices such as backdating or changing the date in the body of the eligibility letter to any other date than that on which the letter is actually being prepared.

#### 5.3 Definitions

- A. **Applicant** - An individual who has signed an application (USOR 4) requesting vocational rehabilitation services.  
**PLEASE NOTE:** To become an applicant an individual must have access to the application (USOR 4). It is the expectation of USOR that potential applicants seeking information regarding the vocational rehabilitation program will be adequately informed of the application process and that application forms (USOR 4) will be available to them upon request. The USOR-4 is also online – [www.usor.utah.gov](http://www.usor.utah.gov)
- B. **Assessment for determining eligibility**- As appropriate and necessary for each individual:
  - 1. A review of existing data to determine whether an individual is eligible for vocational rehabilitation services; and
  - 2. A preliminary assessment of such additional data as necessary to make a determination of an individual's eligibility.
- C. **Employment outcome**- Entering or retaining full-time, or if appropriate, part-time competitive employment in an integrated labor market (including satisfying the vocational outcome of supported employment) or satisfying any other vocational outcome consistent with the federal Rehabilitation Act (including the vocational outcome of self-employed, telecommuting, or business ownership).

- D. **Individual with a disability-** An individual who:
1. Has a physical or mental impairment which constitutes or results in a substantial impediment to employment and;
  2. Can benefit in terms of an employment outcome from vocational rehabilitation services.
- NOTE:** It is presumed that an individual can benefit from vocational rehabilitation services in terms of an employment outcome unless the agency can demonstrate by clear and convincing evidence that the individual is incapable of benefiting from such services in terms of an employment outcome.
- E. **Individual with a significant disability-** An individual with a disability:
1. Who has a severe physical or mental impairment which seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;
  2. Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and
  3. Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.
- NOTE:** The individual must meet all three criteria to be considered an "individual with a significant disability".
- F. **Individual with the most significant disabilities.** (See CSM 24.3)
- G. **Supported Employment-** Competitive work in integrated work settings for individuals with the most significant disabilities:
1. For whom competitive employment has not traditionally occurred or for whom competitive employment has been interrupted or intermittent as a result of a significant disability; and
  2. Who, because of the nature and severity of their disability, need intensive supported employment services or extended services in order to perform such work.
- NOTE:** The term "supported employment" includes transitional employment for persons who are individuals with the most significant disabilities due to mental illness.

- H. **Supported employment services-** Ongoing support services and other appropriate services needed to support and maintain an individual with the most significant disability in supported employment, that:
1. Are provided singly or in combination and are organized and made available in such a way to assist an eligible individual in entering or maintaining integrated, competitive employment;
  2. Are based on a determination of the needs of an eligible individual, as specified in an individualized plan for employment; and
  3. Are provided by the agency for a period of time not to extend beyond 18 months, unless under special circumstances the eligible individual and the agency jointly agree to extend the time in order to achieve the rehabilitation objectives identified in the individualized plan for employment.

#### 5.4 Eligibility Criteria

- A. An individual is eligible for vocational rehabilitation assistance if:
1. The individual has a disability as defined under 5.3D above; and
  2. Requires vocational rehabilitation services to prepare for, enter, engage in or retain gainful employment.
- B. An individual shall be eligible to receive supported employment services authorized under Title VI, Part B of this Act if:
1. The individual is eligible for vocational rehabilitation services;
  2. The individual is determined to be an individual with the most significant disabilities; and
  3. A comprehensive assessment of individualized rehabilitation needs including an evaluation of rehabilitation, career, and job needs, identifies supported employment as the appropriate rehabilitation objective for the individual.

#### 5.5 Presumption of Eligibility

34 CFR 361.42 (3)(i) states that any applicant who has been determined eligible for Social Security benefits under Title II (SSI) or Title XVI (SSDI) of the Social Security Act is presumed eligible for vocational rehabilitation services:

1. Provided they intend to achieve an employment outcome consistent with their primary employment factors; and
2. The agency has not demonstrated clear and convincing evidence that the individual is incapable of benefiting in terms of an employment outcome through trial work exploration due to the severity of the individual's disability.

**Policy:** It is USOR policy that the VR Counselor proceeds with presumptive eligibility as soon as SSI/SSDI beneficiary status is verified through the IRIS batch report.

## 5.6 Utilization of Existing Information

- A. To the maximum extent appropriate and consistent with the requirements of determining the eligibility of an individual for vocational rehabilitation services and developing the individualized plan for employment for the individual, USOR shall use information that is existing and current (as of the date of the determination of eligibility or of the development of the individualized plan for employment), including information available from other programs and providers, particularly information used by education officials and the Social Security Administration, information provided by the individual and the family of the individual, and information obtained under the assessment for determining eligibility and vocational rehabilitation needs.
- B. It is the intent of Congress, while recognizing that timeliness/recency of information may be an appropriate factor in determining utility, that older data may be appropriate under specific circumstances. This is particularly true for those individuals whose disabilities are permanent or chronic. (P.38- SR102-357).
- C. USOR's interpretation of existing information that is "current" as of the date of eligibility or of the development of the IPE means the information was "valid" at that time.
- D. If during the initial interview, existing information is not available or is found to be inadequate or inappropriate, VR Counselors should proceed to gather as much information that can be provided by the individual or if appropriate, the family of the individual to establish the presence of a disability.
  - 1. If through the interview, it can be reasonably determined that there is no impairment present that is an impediment to employment, the VR Counselor should inform the applicant that they are an inappropriate referral, fill out the Form 74 (Initial Contact Report) if case was **not** registered; or a letter documenting reasons for the ineligibility determination if the case **was** registered, and inform the applicant of the availability of CAP.
  - 2. If, through the interview/VR Counselor observation, the presence of an impairment is visually self-evident, e.g. amputation, the counselor may document that fact and assume the presence of an impairment. Self-evident means: clear to the vision or understanding without need of proof or reasoning. (Webster's 9th New Collegiate Dictionary, 1983) Further documentation or additional information may be necessary to determine whether or not the impairment constitutes an impediment to employment.
  - 3. If, through the interview, information from the applicant and if appropriate, family of the applicant, the VR Counselor determines the distinct probability of an existing physical or mental impairment that could be an impediment to employment, the VR Counselor may proceed to

procure appropriate diagnostic information, to the degree needed, to establish the presence of a disability.

## **5.7 60 Day Time Limitation**

- A. USOR shall determine whether an individual is eligible for vocational rehabilitation services under this title within a reasonable period of time, not to exceed 60 days after the individual has submitted an application to receive services unless:
  - 1. The designated state unit notifies the individual that exceptional and unforeseen circumstances beyond the control of the agency preclude the agency from completing the determination within the prescribed time and the individual agrees the specific extension of time is warranted; or
  - 2. Trial work experiences are being conducted to explore the individual's abilities, capabilities, and capacity to perform in work situations.
- B. In situations where the extension of time is required for purposes of determining eligibility, the VR Counselor must provide the individual with written notice in an accessible format concerning the circumstances regarding the request for extension and the individual must agree to the specific extension of time.
- C. If agreement cannot be reached, the District Director shall rule on the extension of time. An individual who disagrees with the District Director's decision must be advised of the rights and remedies that are available, including the right to a hearing by an impartial hearing officer and the availability of the Client Assistance Program (CAP).
- D. The 60 day period shall commence when a signed, completed application is presented to the VR Counselor indicating the applicant's request for VR services. If the client cannot complete the application the VR Counselor or other staff assisting in the completion of the USOR-4 is appropriate. The term "60 day period" means 60 calendar days.
- E. It is USOR expectation that individuals will receive a welcome orientation with the primary purpose of informing an individual about the VR program, mission, purpose and procedures within 10 working days after initial contact with the agency. This may be done individually, in a group setting, or via electronic means.

## **5.8 Eligibility Determination Process**

- A. Upon receipt of a signed, completed application, the VR Counselor will schedule an initial interview and commence an assessment for determining eligibility. Pursuant to the criteria and procedures established by this chapter, the individual shall be certified as either eligible or ineligible for vocational rehabilitation services; or shall be placed in Trial Work Experience. (See Chapter 6 for details.)
- B. If during an extended period of time, an applicant has been unavailable to complete an assessment for determining eligibility and repeated efforts have been made and documented to contact the individual and to encourage his/her

participation, the individual's case may be closed status 08 without a determination of eligibility.

- C. To the maximum extent feasible, the assessment for determining eligibility shall be based upon a review of existing data and documentation. The review and assessment of such data and documentation shall focus on determining:
  - 1. Whether an individual has a physical or mental impairment which constitutes or results in a substantial impediment to employment; and
  - 2. Whether the individual requires vocational rehabilitation services to prepare for, enter, retain, or regain an employment outcome.
- D. In the absence or lack of adequate and appropriate existing information, justified by information received from the applicant or if appropriate, the applicant's family, additional information, to the extent necessary to make a determination of eligibility, may be purchased.

## **5.9 Use of Medical Consultation**

- A. Medical consultation may or may not be appropriate depending upon the circumstances, existing information, and acquired information available to the VR counselor. Medical consultants do not make eligibility determinations, VR Counselors do.
- B. The medical consultant should be a resource to the VR Counselor. Medical consultation is encouraged whenever there is a question regarding the nature and extent of the disability or medical stability, and when clarification is needed of medical reports and terminology. In many instances medical consultation may be more appropriate after the determination of eligibility e.g. planning restoration services or assessing functional limitations regarding a client's choice of an employment outcome.
- C. Medical consultation also remains an important component of determining the appropriateness of services, costs of surgeries, other physical restoration or psychiatric treatment. This information should be included if germane to client service recommendations as the client's progresses through plan development.
- D. Medical consultation is an option to be used at the professional discretion of the VR Counselor. The Form 31 (Green Sheet) should be used to document medical consultation.

## **5.10 Certification of Eligibility/Ineligibility**

- A. Upon completion of the assessment for determining eligibility, the counselor must document the findings on whether the individual does or does not meet the eligibility criteria.
  - 1. The Eligibility or Ineligibility Certificate (letter) must be completed, signed and dated by the VR Counselor. This date represents the official eligibility date and must correspond with the date the letter was actually completed.
  - 2. In cases of a determination of eligibility, the eligibility letter will include:

- a. An explanation of the mental or physical impairment(s).
  - b. An explanation of how the impairment is an impediment to employment for the individual.
  - c. Why the individual requires VR services to prepare for, enter, engage in, or retain gainful employment.
3. In cases of a determination of ineligibility, the VR Counselor shall include in the letter to the individual:
  - a. The reasons for the determination.
  - b. The rights and remedies available to the individual.
  - c. The availability of services provided by the Client Assistance Program.

### **5.11 Conditions Warranting Trial Work Exploration**

Sec 102(a)(2) requires that:

- A. It shall be presumed that an individual can benefit in terms of an employment outcome from VR services unless USOR can demonstrate by clear and convincing evidence that the individual is incapable of benefiting from VR services in terms of an employment outcome due to the severity of the disability.
- B. In making the demonstration required under subparagraph A, USOR shall explore the individual's abilities, capabilities, and capacity to perform in work situations, through the use of trial work experiences, with appropriate supports provided through USOR, except under limited circumstances when an individual cannot take advantage of such experiences. Such experiences shall be of sufficient variety and over a sufficient period of time to determine the eligibility of the individual or to determine the existence of clear and convincing evidence that the individual is incapable of benefiting in terms of an employment outcome from VR services due to the severity of the disability of the individual.

For specific details regarding Trial Work Exploration please refer to Chapter 6.

### **5.12 Annual Review of Ineligibility**

In making a determination of ineligibility, when the decision is that the individual is not capable of achieving a vocational outcome, the Act mandates such a decision shall be reviewed at least annually.

- A. The results of the review shall be documented in the client record (IRIS).
- B. The agency shall initiate the first review. Subsequent reviews shall be initiated upon the request of the individual, or in appropriate cases, the individual's parent or guardian. (VR Counselor completes Form 5b.)
- C. Such a review is **not** required when the individual is no longer present in the state, the individual has refused the review, the individual's whereabouts are unknown, or the individual's medical condition is rapidly progressive or terminal.

Ref: 34 CFR 361.43(d).

### **5.13 Closure Without Eligibility Determination**

In some instances a VR Counselor may not be able to make an eligibility or ineligibility determination. The agency may close a case without any determination of eligibility/ineligibility when:

- A. The applicant is unavailable to complete an evaluation of eligibility within a reasonable period of time and documented efforts have been made to contact the individual and encourage participation. (May include situations where the client becomes institutionalized after application but before eligibility is determined, client death, client relocates without notifying USOR, etc.)
- B. Applicant refused services.
- C. Applicant failed to cooperate, e.g. missed appointments, evaluations, etc.